As to the removal of the caveat, it is clear that on July 24, 1978 and again on July 21, 1980 the caveat was extended until the determination of the civil suit. The rejection of the appellants' application to add a co-plaintiff and to amend the statement of claim does not mean that the suit is determined. Its trial is still to go on. The purpose of the caveat is to protect the interests of the appellants who would otherwise be without protection should the civil suit be determined in their favour. The conduct of the appellants may well show that they are more interested in the continuance of the caveat, than in speedy disposal of their civil suit in that they took no step at all to stir up the litigation, which remained inactive since July 1978. Seeing that they had no ground to oppose the respondents' application for an early trial they once again applied for the extension of the caveat, though this was in fact already given to them, and having obtained the extension twice over on the date of trial they placed further impediments to speedy trial by making an application to add a co-plaintiff and to amend the statement of claim. In our view however much we disapprove of the appellants' conduct this should go only towards costs. It is certainly not a ground to order the removal of the caveat, as the trial of the suit is still pending.

We now come to the appellants' application to add a co-plaintiff and to amend the statement of claim. Counsel for the appellants submitted that since the respondents' defence is that the appellants are a stranger to the offer and purchase of the land it is necessary that Seng Hup should be joined as a co-plaintiff. It is Seng Hup who made the application to purchase the land from the third respondent and it was Seng Hup also who made part payments for the price and to whom the receipts were issued by the 3rd respondent. The proposed amendment of the statement of claim alleges that Seng Hup applied to buy the land and that they appointed the first respondent to act on their behalf for the purpose of completing the purchase and that they had accordingly informed the 3rd respondent. Nothing however is said of the relationship between the appellants and the proposed co-plaintiff, but from the affidavits filed in these cases, it appears that the two directors of Seng Hup, namely Teo Bak Seng and Teo Seng Hua are the promoters, and possibly the directors of the appellants as well, and so Seng Hup and the appellants are associate companies having common directors. In his grounds of decision the learned judge gave three reasons why he dismissed the appellants' application.

These are: —

(i) the proposed amendment is contrary to the statement in the affidavits of Teo Seng Hua sworn on July 18, 1978 which statement was used to support application for the extension of the caveat;

(ii) the appellants are guilty of negligence by failing to instruct their solicitors much earlier, and the present application, if allowed, would further delay the trial and hence prejudice the respondents; and

(iii) the dismissal of the application would not cause any injustice to Seng Hup as they can bring their own action separately against the respondents at any time.

The pleadings of this civil suit raise the issue as to whom the 3rd respondent was making its offer of sale of the lands in question and what condition must be fulfilled by the buyer before the sale could go through. Was the offer made to the promoters of appellants or to Seng Hup Electric Co. Sdn. Bhd. or to the promoters of a joint-venture company, whose formation did not receive the approval of the Registrar of Companies? These facts could only be ascertained after a proper trial, in which witnesses will be subject to examinations and cross-examinations. Leaving out Seng Hup would not lead to a complete determination and adjudication of the matter pertaining to the sale and purchase of this land. We therefore feel that this is a proper case in which the court should exercise its discretion under Order 15 rule 6(2), mindful of the principle that all parties ought to be brought before the court so that their rights and liabilities may be determined in one action instead of in several: *Byrne* v. *Brown.*[1] See also Bowen L.J. in *Van Gelder* v. *Sowerby Bridge Society*[2] and Lord Esher M.R. in *Montgomery* v. *Foy.*[3]

Regarding the affidavits of Teo Seng Hua being contrary to the proposed amendment of the statement of claim, we are of the view that this is a matter which should not concern the court at the present juncture as this evidence was not subject to the test of cross-examinations. If the appellants make the application which is contrary to their evidence, it is a matter for them to bear the consequence of such contradiction.

The delay in making the application for the amendment should therefore only go towards costs.

Hence our conclusion is that the decision of the learned judge is reversed and the appeal is therefore allowed but the appellants have to pay the costs of this appeal and the proceedings in the court below.

Appeal allowed.

Solicitors: *Gill & Tang; Maxwell, Kenion, Cowdy & Jones; Shook Lin & Bok.*

EAST ASIATIC CO. LTD. v. MALAYSIAN INTERNATIONAL MERCHANT BANKERS BHD.

[F.C. (Suffian L.P., Chang Min Tat & Syed Othman F.JJ.) December 8, 1980 & February 28, 1981]

[Kuala Lumpur — Federal Court Civil Appeal No. 239 of 1979]

Practice and Procedure — Appeal to Yang di-Pertuan Agong — Interpleader — Summons — Summary decision — Leave required for appeal — R.S.C. 1957, O. 54 r. 23, O. 57 rr. 8, 9 & 11 — Courts of Judicature Act, 1964, ss. 68(3) & 74(1).

In this case Wiggins Teape (M) Sdn. Bhd. obtained judgment against Bahagia Trading Sdn. Bhd.* and issued a writ of execution. Objection to the seizure of machinery including a Hiedelberg offset printing machine was lodged by several companies, including the appellants and the respondents. An interpleader summons was taken out to resolve the dispute. The interpleader summons was heard by the Senior Assistant Registrar who decided in favour of the respondents and dismissed the claim of the appellants. On appeal, the learned judge held that the machine was so affixed to the ground that it had become a fixture and therefore formed part of the

* See [1980] 2 M.L.J. 45.

land which had been charged to the respondents. The appellants appealed to the Federal Court but as no leave had been obtained, the appeal was dismissed. The appellants thereupon applied for conditional leave to appeal to the Yang di-Pertuan Agong.

Held: (1) in this case there had been no direction for an issue to be tried and therefore the interpleader summons had been dealt with in a summary manner and leave to appeal was required;

(2) it is not the practice of the Federal Court to override the discretion of the Court below unless it can be shown that that Court has exercised its discretion on wrong principles or has failed to take into consideration relevant matters before it or has taken into consideration, considerations not before it. As it had not been shown how the Court below had erred, the Federal Court could not interfere;

(3) in the circumstances leave to appeal to the Yang di-Pertuan Agong should be refused.

Cases referred to:-

(1) *Lopez* v. *Valliappa Chettiar* [1968] 1 M.L.J. 224.

(2) *In re Tarn* [1893] 2 Ch. 280, 283.

(3) *Bryant* v. *Reading* (1886) 17 Q.B.D. 128, 131.

(4) *Harbottle* v. *Roberts* (1905) 74 L.J. K.B. 310.

FEDERAL COURT.

Mrs. De Silva for the appellant.

P. Cumarasamy for the respondent.

Chang Min Tat F.J. (delivering the judgment of the Court): The application is for conditional leave to appeal to His Majesty the Yang di-Pertuan Agong and is made under the provisions of section 74(1) Courts of Judicature Act, 1964 (the Act) which regulate, negatively, the matters that are appealable thereto. The appeal is said to concern a subject-matter of a value of more than $25,000, in which case an appeal lies as of right: section 74(1)(a)(i). Alternatively it is argued that the appeal is by its nature a fit one for appeal: section 74(1)(a)(iii). If so, the discretion lies in the Federal Court whether or not to grant leave: *Lopez* v. *Valliappa Chettiar.*[1]

The case concerns an interpleader summons. For the details of the preceding events which it is necessary to understand, the affidavit in support is woefully deficient and we have to turn to the court file for such of the details as are required to give a proper understanding of the issues relating to the application.

In Civil Suit No. 2477 of 1976, Wiggins Teape (M) Sdn. Bhd. on December 10, 1976 entered judgment in default of defence against Bahagia Trading Sdn. Bhd. for $158,131.18 with interest and costs. On January 25, 1977 the judgment creditor applied for and had issued a writ of execution. On April 27, 1977 Malaysian Industrial Development Finance Bhd. (MIDF) lodged an objection to the seizure of certain pieces of machinery. The solicitors for the judgment creditor initially consented to the release of these goods. On May 5, 1977, another objector in the identity of Malaysian International Merchant Bankers Bhd. (MIMB) appeared. Another firm, the East Asiatic Co. Ltd. (EAC) also lodged a claim. The several claims concerned the same pieces of machinery, in particular one Heidelberg offset printing machine which had been obtained by the judgment debtor from EAC in circumstances which did not pass the title and affixed by it to the land which had been leased to the judgment debtor but charged to MIMB by the lessor.

The judgment creditor was in a quandary. While it had no objection to the release of goods not under dispute, it was unable to determine to whom the articles should be released. It therefore asked the Sheriff to determine this question and to act according to his determination. Its solicitors accordingly withdrew their previous letter of release. As for the articles under dispute, it asked for an interpleader summons to be taken by the Sheriff and for a hearing of this summons.

The Senior Assistant Registrar who heard the interpleader summons decided in respect of the Heidelberg offset printing machine in favour of MIMB and dismissed the claim of EAC. On appeal, which was first heard in chambers and later in open court, the judge, on November 10, 1979 delivered a reserved judgment. He held that the machine was so affixed to the ground that it had become a fixture and therefore formed part of the land which had been charged to MIMB. EAC was dissatisfied and within time and without further ado, lodged a notice of appeal from this judgment to the Federal Court, under the provisions of Order 54 rule 23, Rules of the High Court, 1957. EAC did not consider the provisions of section 68(3) of the Act on matters appealable to the Federal Court.

This subsection reads:

"68(3). No appeal shall lie from a decision of a Judge in Chambers in a summary way on an interpleader summons, where the facts are not in dispute, except by leave of the Federal Court or a Judge of the High Court, but an appeal shall lie from a judgment given in Court on the trial of an interpleader issue."

By this subsection, it is a matter of some importance to consider whether the interpleader summons had been decided by the judge in chambers in a summary manner or whether there had been a trial of an interpleader issue, in order to determine whether leave is required for an appeal from the judge in chambers to the Federal Court or the appeal is a matter of right.

The provisions for the disposal of matters in a summary manner are in Order 57 rule 8, Rules of the High Court, 1957, which reads:

"8. The court or a judge may, with the consent of both claimants or on the request of any claimant, if, having regard to the value of the subject-matter in dispute, it seems desirable so to do, dispose of the merits of their claims and decide the same in a summary manner and on such terms as may be just."

Rule 9 is not without relevance. It reads:

"9. Where the question is a question of law and the facts are not in dispute, the court or a judge may either decide the question without directing the trial of an issue, or order that a special case be stated for the opinion of the court."

A decision of the court or a judge in a summary way or on a question of law is final and conclusive against the claimants and all persons claiming under them unless leave to appeal is given by the court or judge or by the Federal Court: rule 11(1) but an appeal lies from any decision or any judgment by the judge in the trial of an interpleader issue: rule 11(2). The rules complement the substantive law in this matter.

In the rules as they then stood (taken and adapted from the Rules of the Supreme Court, 1883) where

power was given to a "court or a judge", that power could not be exercised by a Registrar unless the rules so provided. Order 54 rule 12 (a local rule) by necessary implication permitted the hearing of an interpleader summons by a Registrar. The matter before us thus becomes a question of the nature of the determination by the Senior Assistant Registrar of this particular interpleader summons.

The solicitors for the applicant (EAC) did not apply for leave, not because in their view there had been a trial of an issue before the Senior Assistant Registrar but because they had, as they frankly admitted, passed over the provisions of section 68(3) of the Act. When they came to know of these provisions, they did not then stop to consider whether there had been a trial of an issue but they promptly, though in point of time, it was on July 29, 1980, by an amended summons-in-chambers, applied for leave to appeal from the judge who had heard the appeal from the decision of the Senior Assistant Registrar. The judge initially gave leave but after hearing further argument in open court, rescinded the order he had made previously in chambers and withdrew the leave. An application to this court for leave to appeal to us was next refused, after counsel for MIMB had submitted his objection to the granting of the leave for failure to obtain leave prior to the lodging of the appeal. Counsel for EAC took the point that MIMB did not object when served with the notice of appeal and only did so on the application for leave.

At the hearing of the application before us, counsel contends that perhaps leave is not required, presumably because there had been a trial of an interpleader issue. But it is settled law that whenever the court or judge decides interpleader proceedings without directing an issue under Order 57 rule 8 or stating a case under rule 9, the decision is a summary decision: *In re Tarn;*[2] *Bryant* v. *Reading;*[3] *Harbottle* v. *Roberts.*[4] There has been no direction for an issue to be tried, the interpleader summons had been dealt with in a summary manner and leave to appeal was required.

Insofar as the leave of the court is concerned, we reject by reason of the provisions of section 68(3) of the Act any suggestion that the High Court was incorrect in refusing to exercise this discretion it undoubtedly had whether to grant leave or to refuse it or in revoking the leave granted in chambers after fuller consideration of the argument advanced in open court. We are also of the opinion that leave of the court is necessary even when the decision sought to be appealed from is one made by the judge on appeal from the Senior Assistant Registrar. It really is a matter for the discretion of the court from whom leave is sought. In such a matter, it is not the practice of this court to override the discretion of the court below unless it can be shown that that court has exercised its discretion on wrong principles, or has failed to take into consideration relevant matters before it or has taken into account considerations not before it. We have not been advised how the court has erred.

Insofar as the discretion of the court under section 74(1)(a)(iii) of the Act is concerned, it ought to be realised that the matter is fraught with procedural difficulties. If we are persuaded that the considerations that moved the High Court to decide in favour of MIMB and against EAC are fit for appeal, we cannot be oblivious to the fact that the appeal with leave is not from the decision of the Federal Court which has not heard the appeal from the decision of the High Court but is actually concerned with the refusal of the High Court and this court to give leave to appeal from the High Court to the Federal Court. Unless the Privy Council is predisposed to hear the appeal without knowing the views of the Federal Court, the appeal to the Privy Council, if it succeeds, could only mean effectively a direction to the Federal Court to hear the appeal from the High Court.

In all the circumstances of this case, we refuse leave.

Leave refused.

Solicitors: *Chooi & Co.; Shook Lin & Bok.*

LEE AH CHIN v. WONG YOON CHAI

[O.C.J. (Yusoff Mohamed J.) July 26, 1980]
[Johore Bahru — Originating Summons No. 242 of 1977]

Land Law — Foreclosure proceedings — Consequential reliefs for return of document in possession of chargee.

This was an application by a chargor for the consequential reliefs and for the return of his document of title which was in the possession of the chargee. The title to the land was the subject of a charge and foreclosure action had been instituted by the chargee arising from a moneylending transaction. The foreclosure proceedings were dismissed by the court on November 11, 1979. In his affidavit supporting the application, the applicant said that his counsel through inadvertence had failed to apply for these consequential orders resulting from the dismissal of action.

Held: (1) as the chargee did not lodge any appeal against the dismissal of the foreclosure proceedings and the order was extracted on December 13, 1979 this puts an end to the litigation;

(2) in the circumstances the reliefs sought by the chargor must be granted in terms.

ORIGINATING SUMMONS.

Mohamed Elyas Majeed for the applicant.

T.S. Chong for the respondent.

Yusoff Mohamed J.: In this summons the applicant/chargor applied for the consequential reliefs and for the return of his document of title C.T. 8320, Lot 5688 Mukim of Senai, Kulai which was in the possession of the respondent/chargee. The title to the land was the subject of a charge and foreclosure action instituted by the respondent/chargee arising from a moneylending transaction. The foreclosure proceedings were dismissed by the court on November 11, 1979.

In his affidavit supporting the application, the applicant said that his counsel through inadvertence had failed to apply for these consequential orders resulting from the dismissal of action.

The application was opposed by the respondent/chargee. In his affidavit in opposition he contended